

**IN THE U.S. DISTRICT COURT FOR MARYLAND,  
SOUTHERN DIVISION**

**BEYOND SYSTEMS, INC.**

Plaintiff

v.

**WORLD AVENUE USA, LLC, ET AL.**

Defendants

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**Case No. 8:08-cv-00921**

**DECLARATION OF PAUL A. WAGNER**  
**REGARDING ADDITIONAL PUBLIC DISCLOSURES OF**  
**WORLD AVENUE DOMAIN NAMES**

I, Paul A. Wagner, state the following under oath:

1. I am over 18 years of age, have personal knowledge of the matters stated below unless otherwise indicated, and am competent to testify to the facts set forth in this Declaration.
2. I am the president of Beyond Systems, Inc. (“BSI”), plaintiff in this case.
3. Using publicly available information, I have observed domain names attributed to World Avenue USA, LLC (WAUSA) and its agents and representatives in Domain Name Service (“DNS”) root zone files, and by running the “host” command against ranges of IP addresses (subnet addresses) attributed to WAUSA and its agents and representatives. Such lookups also reveal the entities providing DNS for the domains (e.g., Tiggee, LLC and TheUseful, LLC at different times) and serving as the registrar for the domains (e.g., eNom). I understand that much of this information in its current form was always public but first became distinguishable to the public when and it agents transferred WAUSA’s domain service to in-house servers. My search revealed 4,482 domain names controlled by World Avenue and its agents and representatives, including 570 World Avenue domain names that were served by Tiggee, LLC (a.k.a.

DNSMadeEasy). The DNS configurations of all of these domains are publicly observable. I am aware that World Avenue stated that its “private Domain Names were disclosed to DNS Made Easy in the strictest confidence.” [See Exhibit L-1]

4. I have compared the 4,482 domain names against domain names that appear in the emails received by BSI or in landing pages linked to those emails. This comparison resulted in matches for 297 domain names.

5. I have compared the 297 domain names to the list of 40 domain names (miscounted as 41) previously identified in filings in this case, for which DNSMadeEasy, LLC had provided DNS service. After eliminating names that appear on both lists, there was a total of 305 unique domain names.

6. Using publicly available domain name service ("DNS") root zone files, I have found thousands of additional domain names enabled by Tiggee, controlled by World Avenue, or both. This is explained below.

7. The public Whois registration information on the domain names in most instances conceals World Avenue as the true owner, as the registrations are in the names of hundreds of fake businesses or proxy services (also known as “privacy services”), as shown below.

#### **Previous Attribution of Domain Names to World Avenue**

8. Prior to the filing of this lawsuit, and again early this year, I employed a variety of techniques, using information that is publicly available, to find thousands of domain names controlled or used by World Avenue. These techniques yielded various lists of search terms, whose appearance in commercial emails or in web pages to which hyperlinks in the emails lead (a.k.a. “landing pages”) would suggest involvement by World Avenue. One such list appears in Exhibit 23 [attached to Amended Complaint, D.E. 34-15]. An expanded list, including the

contents of the first list, is contained in Exhibit 38 [attached to Second Amended Complaint, D.E. 177-4, filed in March 2010], along with the following descriptions in the exhibit:

Original list of terms, from  
which Plaintiff's Exhibit 23  
was derived

WorldAve domain names  
from Google search of  
"operated by Net  
Radiance"

Domains from Reverse  
IP lookups on  
213.200.112.\* and  
66.7.179.\*

Reverse DNS for  
Venteinc.com

Rerverse DNS lookup on  
69.17.220.125

9. Another approach, using the DNS root zone files, similarly turns up public information revealing thousands of domain names controlled and/or used by World Avenue.

### **Background on DNS**

10. A domain name is registered under several categories of information, which should accurately identify its owner; administrative, technical and billing contacts; and one or more authoritative nameservers. An authoritative nameserver maps the domain name to various IP addresses for various types of Internet traffic, such as web and email traffic.

11. In order to function, every domain name must specify one or more authoritative nameservers from which users can obtain the IP address of the hosts associated with that domain. Accessing a machine on the Internet via its host name (e.g., www.yahoo.com or mail.yahoo.com) involves two steps, normally undertaken automatically by a browser, mail client program or mail

server, FTP client or other program: (1) locating the nameserver for that domain, and then (2) obtaining from the nameserver the IP address of the target machine.

12. Domain names commonly are assigned multiple nameservers, often on distinct networks, whose DNS records are kept synchronized in order to provide failover and scalability.

For example, a Whois lookup on "google.com" returns the following nameservers:

GOOGLE.COM name server ns4.GOOGLE.COM.  
GOOGLE.COM name server ns1.GOOGLE.COM.  
GOOGLE.COM name server ns3.GOOGLE.COM.  
GOOGLE.COM name server ns2.GOOGLE.COM.

13. BSI uses its own nameservers and those of Hypertouch, Inc. as alternates. A user wishing to access www.beyo.us, mail.beyo.us, ftp.beyo.us or other hosts whose names contain "beyo.us" must first visit the authoritative nameserver for that domain in order to get the target machine's IP address. The nameservers provide the following information for "beyo.us":

beyo.us	NS	dns1.linkcenter.net
beyo.us	NS	dns1.hypertouch.com
mail.beyo.us	MX	10 mail.beyo.us
beyo.us	MX	10 mail.beyo.us
mail2.beyo.us	MX	20 mail2.beyo.us
beyo.us	MX	20 mail2.beyo.us
mail.beyo.us	A	71.126.148.132
mail2.beyo.us	A	173.164.218.247
ftp.beyo.us	A	71.126.148.131
www.beyo.us	A	66.33.19.153
beyo.us	A	66.33.19.153
pebbles.beyo.us	A	71.126.148.131
kk.beyo.us	A	71.126.148.131
precision.beyo.us	A	66.93.97.101
ema.beyo.us	A	66.93.97.103
imac.beyo.us	A	66.93.97.100

14. The nameserver records ("NS records") point to the authoritative DNS servers for the domain name. The mail exchanger records ("MX records") point to mail servers to handle mail associated with the domain. The address records ("A records") map a particular host name

containing the domain to an IP address. (See

[http://en.wikipedia.org/wiki/Domain\\_Name\\_System](http://en.wikipedia.org/wiki/Domain_Name_System) and

[http://en.wikipedia.org/wiki/List\\_of\\_DNS\\_record\\_types](http://en.wikipedia.org/wiki/List_of_DNS_record_types).)

15. Typically bulk emailers use falsely-registered domain names as part of the name of its nameserver or alternatively use the nameserver of a large DNS provider that is used by thousands of other customers as well. For example, the DNS servers of DNSMadeEasy, eNom and UltraDNS provide DNS to thousands of customers. Either type of nameserver set up -- falsely named or essentially anonymous -- impairs an investigator from using the name of the authoritative nameserver (e.g., dns1.linkcenter.net or dns1.hypertouch.com) to ascertain who controls the domain.

16. Many legitimate businesses use their own domain name in the name of the nameservers for their domains. For example, the authoritative nameservers for "ibm.com" have the following names:

internet-server.zurich.ibm.com	195.176.20.204
ns.watson.ibm.com	129.34.20.80
ns.almaden.ibm.com	198.4.83.35
ns.austin.ibm.com	192.35.232.34

[from <http://whois.domaintools.com/ibm.com>]

17. Some legitimate businesses do use the names of large DNS providers in the nameservers, instead of their own. Possible reasons for outsourcing DNS include greater reliability, scalability and less hassle than providing DNS to oneself.

18. Bulk emailers rarely use a nameserver with a domain name readily traceable to themselves.

**NS records reveal 4,394 Domain Names enabled by TheUseful, LLC**

19. I learned that World Avenue has in recent months registered thousands of its supposedly confidential domain names under bogus identities – but with authoritative nameservers readily attributable to itself. At least some of World Avenue’s nameservers are listed in Exhibit L-2. I am aware that Robert Erie, WAUSA’s Vice-President of Analytics, had sworn in his Declaration of February 5, 2010 [see Exhibit L-1] that “7. The private Domain Names were disclosed to DNS Made Easy in the strictest confidence.” In fact, as shown below, thousands of the domains used by World Avenue and publicly referencing World Avenue nameservers include domains that once publicly referenced Tiggee nameservers. That is, Tiggee once provided the DNS for them. (The domains were "enabled by Tiggee.")

20. In recent months World Avenue apparently ceased using Tiggee and transferred thousands of its domains to its own nameservers. Subsequently, World Avenue now is in the process of transferring the domains back to large DNS providers, such as eNom or UltraDNS. [See the transfers as detected by DomainTools' "Name Server Spy" service in Exhibit L-3; one can also observe the transfers by comparing DNS root zone files from two points in time.] It will therefore be impractical to attribute to World Avenue any new domains it acquires in the future by examining the public nameserver data this way. However, any assignment of “ns1.theuseful.com” or other World Avenue nameserver hostname to the domains in the past ties them to World Avenue and has been recorded permanently. Every authoritative nameserver ever assigned to a domain name (even for a brief period of time) gets stored in the DNS root zone files. (See [http://en.wikipedia.org/wiki/DNS\\_root\\_zone](http://en.wikipedia.org/wiki/DNS_root_zone))

21. The DNS root zone files are compiled daily for all domain names on the commonly used Top Level Domains ("TLDs"). In the observations described below, I viewed snapshots of the zones since 2007, sampled as follows:

zone.biz-2007-06-13.gz	info.zone-20100803.gz
zone.biz-2008-06-14.gz	
zone.biz-2009-08-17.gz	net.zone-2007-06-13.gz
zone.biz-2010-03-07.gz	net.zone-2008-06-14.gz
zone.biz-2010-08-03.gz	net.zone-2009-03-20.gz
zone.biz-2010-08-14.gz	net.zone-2009-09-29.gz
zone.biz-2010-09-01.gz	net.zone-2010-05-27.gz
zone.biz-2010-09-20.gz	net.zone-2010-08-14.gz
	net.zone-2010-09-01.gz
	net.zone-2010-09-20.gz
com.zone-2007-01-23.gz	
com.zone-2007-07-09.gz	
com.zone-2008-01-21.gz	org.zone-20070613.gz
com.zone-2008-07-07.gz	org.zone-20080614.gz
com.zone-2009-03-20.gz	org.zone-20090819.gz
com.zone-2009-09-29.gz	org.zone-20100307.gz
com.zone-2010-03-07.gz	org.zone-20100528.gz
com.zone-2010-05-27.gz	org.zone-20100803.gz
com.zone-2010-08-14.gz	
com.zone-2010-09-01.gz	zone.us-2007-06-13.gz
com.zone-2010-09-20.gz	zone.us-2008-06-14.gz
	zone.us-2009-08-17.gz
info.zone-20070613.gz	zone.us-2010-03-07.gz
info.zone-20080614.gz	zone.us-2010-08-03.gz
info.zone-20090615.gz	zone.us-2010-08-14.gz
info.zone-20100307.gz	zone.us-2010-09-01.gzzone.us-2010-
info.zone-20100527.gz	09-20.gz

22. A search through the zone files for World Avenue's nameservers turns up thousands of domain names, including the following (as examples) for the .com TLD:

IWANTMYFREEPDA NS NS1.THEUSEFUL  
IWANTMYFREEPDA NS NS2.THEUSEFUL  
IWANTMYFREEPLASMA NS NS1.THEUSEFUL  
IWANTMYFREEPLASMA NS NS2.THEUSEFUL  
IWANTMYFREETHINLAPTOP NS NS1.THEUSEFUL  
IWANTMYFREETHINLAPTOP NS NS2.THEUSEFUL  
IWANTMYGIFTCARD NS NS1.THEUSEFUL  
IWANTMYGIFTCARD NS NS2.THEUSEFUL  
JERSEY-OFFER NS NS1.THEUSEFUL  
JERSEY-OFFER NS NS2.THEUSEFUL  
JULIASLITTLEWORLD NS NS1.THEUSEFUL  
JULIASLITTLEWORLD NS NS2.THEUSEFUL  
JUMPCLIENT NS NS1.THEUSEFUL  
JUMPCLIENT NS NS2.THEUSEFUL

JUSTBESTWORLDGIFT NS NS3.RESOLVINGSERVER  
JUSTBESTWORLDGIFT NS NS4.RESOLVINGSERVER  
JUSTDIGITALREWARD NS NS3.RESOLVINGSERVER  
JUSTDIGITALREWARD NS NS4.RESOLVINGSERVER  
JUSTMYGIFTONLINE NS NS3.RESOLVINGSERVER  
JUSTMYGIFTONLINE NS NS4.RESOLVINGSERVER  
JUSTMYOWNREWARDS NS NS3.RESOLVINGSERVER  
JUSTMYOWNREWARDS NS NS4.RESOLVINGSERVER  
JUSTMYPRIZES NS NS3.RESOLVINGSERVER  
JUSTMYPRIZES NS NS4.RESOLVINGSERVER  
KEYBOARDOFFER NS NS1.THEUSEFUL  
KEYBOARDOFFER NS NS2.THEUSEFUL  
KITARAMEDIAGAMES NS NS1.EXPERTSAVINGS  
KITARAMEDIAGAMES NS NS2.EXPERTSAVINGS  
KITSZONE NS NS3.RESOLVINGSERVER  
KITSZONE NS NS4.RESOLVINGSERVER  
KNOWITORNOT NS NS1.THEUSEFUL  
KNOWITORNOT NS NS2.THEUSEFUL  
LAPTOP-INCENTIVE NS NS1.THEUSEFUL  
LAPTOP-INCENTIVE NS NS2.THEUSEFUL  
LAPTOPINCENTIVE NS NS1.THEUSEFUL  
LAPTOPINCENTIVE NS NS2.THEUSEFUL  
LAPTOPREWARD NS NS1.THEUSEFUL  
LAPTOPREWARD NS NS2.THEUSEFUL  
LAPTOPREWARDS NS NS1.THEUSEFUL  
LAPTOPREWARDS NS NS2.THEUSEFUL  
LARGEONLINEOFFERS NS NS3.RESOLVINGSERVER  
LARGEONLINEOFFERS NS NS4.RESOLVINGSERVER  
LEADMARKADVERTISING NS NS1.THEUSEFUL  
LEADMARKADVERTISING NS NS2.THEUSEFUL  
LEARNING-OFFER NS NS1.THEUSEFUL  
LEARNING-OFFER NS NS2.THEUSEFUL  
LEGAL-REWARDBLVD NS NS1.THEUSEFUL  
LEGAL-REWARDBLVD NS NS2.THEUSEFUL  
...  
RIGHTMAIL NS NS1.THEUSEFUL  
RIGHTMAIL NS NS2.THEUSEFUL  
...

23. The TLD (e.g., “.com”) is omitted in the DNS root zone files disseminated to the public for brevity. For example, “RIGHTMAIL” means “RIGHTMAIL.COM” (immediately above), “NS1.THEUSEFUL” means “NS1.THEUSEFUL.COM” and so on. I extracted from the



DNS root zone records all domain names assigned to any of the World Avenue nameserver host names in Exhibit L-2. I found 4,394 domains enabled by the World Avenue nameservers.

24. I had not performed this type of lookup (i.e., DNS-based) previously in part because World Avenue had represented that the domains were highly proprietary and not disclosed to the public. BSI's Exhibits 23 and 38 similarly tied thousands of domain names to World Avenue based on various other types of public information, despite the domains being claimed as a "trade secret."

**NS records reveal 274,550 domain names enabled by Tiggee**

25. I extracted from the zone files all or nearly all domain names that have been enabled by Tiggee since 2007 (i.e., all domains listing "DNSMADEEASY" as an authoritative nameserver). The following root zone records for the .com TLD are examples:

```
...
1HR-MARTINIZING NS NS1.DNSMADEEASY
1HR-MARTINIZING NS NS4.DNSMADEEASY
1HR-MARTINIZING NS NS3.DNSMADEEASY
1HR-MARTINIZING NS NS0.DNSMADEEASY
1HR-MARTINIZING NS NS2.DNSMADEEASY
...
EMN-SUPERBREWARDS NS NS10.DNSMADEEASY
EMN-SUPERBREWARDS NS NS11.DNSMADEEASY
EMN-SUPERBREWARDS NS NS12.DNSMADEEASY
EMN-SUPERBREWARDS NS NS13.DNSMADEEASY
EMN-SUPERBREWARDS NS NS14.DNSMADEEASY
EMN-SUPERBREWARDS NS NS15.DNSMADEEASY
...
SUPERBREWARDS NS NS10.DNSMADEEASY
SUPERBREWARDS NS NS11.DNSMADEEASY
SUPERBREWARDS NS NS12.DNSMADEEASY
SUPERBREWARDS NS NS13.DNSMADEEASY
SUPERBREWARDS NS NS14.DNSMADEEASY
SUPERBREWARDS NS NS15.DNSMADEEASY
...
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26. (EMN-SUPERBREWARDS.COM and SUPERBREWARDS.COM belong to World Avenue; 1HR-MARTINIZING.COM belongs to someone else. DNSMADEEASY is an abbreviation of DNSMADEEASY.COM, which belongs to Tiggee. See <http://whois.domaintools.com/>) I found 274,550 domains enabled by Tiggee at its DNSMADEEASY.com nameservers.

**NS records reveal 501 of the 4,394 domains enabled by TheUseful, LLC were once enabled by Tiggee (501 “Tiggee-World Avenue domains”)**

27. I compared the 4,394 domains enabled by TheUseful, LLC since 2007 with the 274,550 domains enabled by Tiggee (i.e., assigned to DNSMadeEasy.com nameservers) since 2007, and found 501 domains in common. I conclude that these 501 domains controlled by World Avenue were enabled by Tiggee. I shall refer to such domain names, and other domains likewise found to have both Tiggee and World Avenue involvement, as “Tiggee-World Avenue domains.”

28. It became evident that 492 of the 501 domains were controlled by World Avenue in roughly the past two months, after World Avenue transferred them from "DNSMADEEASY" nameservers to World Avenue nameservers. That is, 492 domains appear in the 2010-08 or 2010-09 zone files assigned to a World Avenue nameserver that once was assigned to a "DNSMADEEASY" nameserver.

29. The 501 Tiggee-World Avenue domains were identified based on Tiggee and World Avenue host names appearing as the nameserver in the NS records of the root zone files at different points in time.

**A records reveal 461 Tiggee-World Avenue domains**

30. As a second approach, one can attribute a domain name to World Avenue if an A record for the domain contains an IP address used by World Avenue. That suggests that one or more Internet applications has been or will be operating on a IP address assigned to World Avenue using this new domain name. Therefore, I first extracted every domain from the zone files containing any of the following strings ("World Avenue IP Addresses"):

38.117.34.  
64.152.128.  
66.101.153.  
66.7.179.  
213.200.112.  
213.200.113.  
213.200.114.  
213.200.115.  
213.200.116.  
213.200.117.  
213.200.118.  
213.200.119.

31. Then I ran the "host" command on a Macintosh (see [http://en.wikipedia.org/wiki/Host\\_%28Unix%29](http://en.wikipedia.org/wiki/Host_%28Unix%29)) for each of these domain names, and on those same domains prepended with "WWW." That yielded 3 new types of records of interest, among other types: A records (indicated by "has address" in the list below), MX records ("mail is handled by") and CNAME records ("is an alias for"). Here are sample records of these 3 types resulting from running the host command on the domains::

...  
AAWEBHOST.COM has address 69.43.160.145  
AAWHEEL.COM has address 208.74.97.202  
AAWHEEL.COM mail is handled by 10 aawheel.com.inbound15.mxlogicmx.net.  
AAWHEEL.COM mail is handled by 20 aawheel.com.inbound15.mxlogic.net.  
AAWORK.COM has address 173.203.39.30  
AAWWP.COM has address 64.202.189.170  
AAWWP.COM mail is handled by 0 smtp.secureserver.net.  
AAWWP.COM mail is handled by 10 mailstore1.secureserver.net.  
...

DAKOTATITLE.COM has address 173.201.216.8  
DAKOTATITLE.COM mail is handled by 10 mail.DAKOTATITLE.COM.  
DAKPLAAT.COM is an alias for www.DAKPLAAT.COM.

...

32. I extracted 461 unique domain names from the A records containing a World Ave IP address. All 461 domains are among the 274,550 domain names enabled by Tiggee.

**MX records reveal 568 World Avenue domains, 560 Tiggee-World Avenue domains**

33. Similarly, one can attribute a domain name to World Ave if it has an MX record containing a hostname used by World Avenue. That suggests that one or more Internet applications has been or will be exchanging email under the control of World Avenue using this new domain name. So first I extracted every domain from the zone files containing any of the World Avenue IP Addresses.

34. Then, using the results from the "host" command described above, I extracted 568 unique domain names from the MX records containing any of the 4,414 World Avenue domain names found prior to running the "host" commands. 560 of the domains are among the 274,550 domain names enabled by Tiggee.

**All together, public DNS records reveal at least 4,482 World Avenue domains, 570 Tiggee-World Avenue domains**

35. Combining the two sets of 461 and 568 overlapping Tiggee-World Avenue domains resulting from the "host" commands (obtained by examining public A and MX records) with the 4,414 World Avenue domains (obtained by examining NS records in the zone files) results in a final set of 4,482 domain names controlled by World Avenue. This final set is shown in Exhibit L-4. 570 of the domains are among the 274,550 domain names enabled by Tiggee.

**297 World Avenue domains, 103 Tiggee-World Avenue domains are in emails to BSI or landing pages**

36. I searched for the 4,414 World Avenue domain names in emails received by BSI and found that 297 domains appeared in thousands of emails. 103 Tiggee-World Avenue domains appeared in the emails.

**2,537 World Avenue domains are registered to 494 purported registrants (owners)**

37. Whois lookups on 2,537 World Avenue domain names turns up 494 distinct identities for the registrant of the domain. [See Exhibit L-5.] Almost all of these names appear to be fake business names, except for the World Avenue corporate names that BSI has identified previously. The 2,537 domain names can be seen publicly running on World Avenue's network by performing a reverse lookup on an IP address publicly assigned to World Avenue – i.e., on 66.7.179.198.

**At least 2,537 World Avenue domains are enabled by eNom**

38. A search through the Whois lookups mentioned in the previous paragraph turns up 2,537 domain names with registrations containing "Registrar: ENOM, INC." [Refer again to Exhibit L-5.] Therefore the facts that these domains are controlled and used by World Avenue and that they are registered with eNom are public knowledge.

39. Domain registration information, (including customer name, payor, admin contact, tech contact, customer address) is needed directly from eNom for the following reasons:

- a. to confirm BSI's findings with first hand sources;
- b. to identify which of the World Avenue company(ies) participate in this key aspect of the e-mail based marketing program;
- c. to obtain accurate snapshots of ownership information back to 2004 -- as Whois lookups show only current information
- d. to identify the true owners behind proxy registrations; and
- e. to demonstrate further World Avenue's pattern and practice of using proxy or false domain registration information as part of their efforts to conceal themselves, and not "bare error" or "immaterial error."

I declare under penalties of perjury that the foregoing statements are true and correct.

Date: September 22, 2010

A handwritten signature in black ink, appearing to read "Paul W. [unclear]", is written over a solid horizontal line. The signature is stylized and cursive.